

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA**

THIS WEDNESDAY, THE 23RD DAY OF JANUARY, 2019

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CR/193/16

BETWEEN:

THE FEDERAL REPUBLIC OF NIGERIACOMPLAINANT

AND

IDRIS OBARODEFENDANT

JUDGMENT

The defendant was initially arraigned under a three counts charge under the relevant provisions of the **Advance Fee fraud and Other Related Offences Act, 2006.**

The arraignment was on 13th December, 2016 and he pleaded not guilty to the charge. The prosecution opened its case on 8th May, 2017 and has so far called one witness. In the course of his testimony, objection was raised to the admissibility of a particular document on the ground that it was not voluntarily obtained which occasioned a trial within a trial.

A trial within a trial duly commenced and the prosecution called three witnesses who were duly cross-examined and closed its case. The defendant has equally opened his defence in the trial within trial.

it was at this point that counsel to the prosecution informed the court that a plea agreement was reached by the prosecution and the defence. The plea agreement was filed in court on 14th January, 2019 and signed by the prosecutor, defendant,

his legal practitioner and investigating officer. The agreement substantially complies with the provisions of **Section 270 (7) of ACJA 2015**. In the agreement, it was stated therein, that the defendant has shown remorse and has paid back the sum of N265, 000.00 to the nominal complainant. Following the agreement, the prosecution filed an amended three counts charge of cheating punishable under **Section 322 of the Penal Code** to which the defendant agreed to plead guilty to as part of the plea agreement. The Amended charge now reads as follows:

COUNT 1

That you Idris Obaro on or about January, 2014 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory fraudulently deceived one Osang Miriam Badmus of Jikwoyi Phase II, Abuja into paying you the sum of N105, 000.00 (One Hundred and Five Thousand Naira Only) by promising her a job with the Federal Ministry of Petroleum Resources and thereby committed cheating contrary to Section 320 and punishable under Section 322 of the Penal Code Cap 532 laws of the Federation of Nigeria 2004.

COUNT 2

That you Idris Obaro on or about January, 2014 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory fraudulently deceived one Osang Miriam Badmus of Jikwoyi Phase II, Abuja into paying you the sum of N52, 000.00 (Fifty Two Thousand Naira Only) by promising her a job with the Federal Ministry of Petroleum Resources and thereby committed cheating contrary to Section 320 and punishable under Section 322 of the Penal Code Cap 532 laws of the Federation of Nigeria 2004.

COUNT 3

That you Idris Obaro on or about January, 2014 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory fraudulently deceived one Osang Miriam Badmus of Jikwoyi Phase II, Abuja into paying you the sum of N108, 000.00 (One Hundred and Eight Thousand Naira Only) by promising her a job with the Federal Ministry of Petroleum Resources and thereby committed cheating contrary to Section 320 and

punishable under Section 322 of the Penal Code Cap 532 laws of the Federation of Nigeria 2004.

The defendant pleaded guilty to the above three counts on 23rd January, 2019. Further to the provision of **Section 270(10) of ACJA 2015**, I enquired from the defendant whether he admits the allegation in the charge to which he pleaded guilty. He answered in the affirmative. I also enquired as to whether he entered into the agreement voluntarily and without undue influence; he equally answered in the affirmative.

I am therefore in no doubt that the defendant fully understood the amended charge vis-à-vis the plea agreement he freely entered into. In the circumstances, the duty of court is circumscribed by the clear provisions of **Section 270 (10) of ACJA**. I therefore find and pronounce the defendant guilty on the three counts Amended Charge and Convict him as charged.

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Hon. Justice A.I. Kutigi

SENTENCE

I have carefully considered the plea for mitigated sentence as articulated by learned counsel to the defendant. I have also similarly considered the response by prosecuting counsel.

Now in this case, parties, may have entered into a plea arrangement but going through the terms of the agreement, parties appear to have left sentencing to the court and within the confines of the FCT Courts (sentencing guidelines) practice direction 2016.

Let me quickly state that it not the guidelines that provides statutory template for sentencing. The guidelines only streamlines the process towards achieving a structured sentencing regime. No more.

In this case therefore, we are to be guided by the clear provisions of the Penal Code which provides the punishment for the offences charged. The punishment under

Section 322 range from imprisonment or fine or both. Whatever discretion that may be exercised must be such obviously allowed by law. It is trite law that the sentence of a court must be in accordance with that prescribed by the statute creating the offence. The court cannot therefore impose a higher punishment than that prescribed for the offence neither can a court impose a sentence which the statute creating the offence has not provided for. See **Ekpo V. State (1982)1 NCR 34.**

Now my attitude when it comes to sentencing is basically that it must be a rational exercise with certain specific objectives. It could be for retribution, deterrence, reformation etc in the hope that the type of sanction chosen will put the particular objective chosen, however roughly, unto effect. The sentencing objective to be applied and therefore the type of sentence to give may vary depending on the needs of each particular case.

In discharging this, no doubt difficult exercise, the court has to decide first on which from the above principles or objective apply better to the facts of a case and then the quantum of punishment that will accord with it.

In this case, if the objective is deterrence and reformation for the young Accused Person and I presume they are, then the maximum punishment for each of the three counts as provided for in the penal code appear to me particularly excessive in the light of the facts of this case alluded to by counsel on both sides of the aisle.

In the circumstances, the court must therefore here engage in some balancing act: (1) To be consistent and firm in enforcing clear provisions of the law and (2) To be fair to the Accused Person where true penitence as in this case is displayed. I have considered all these factors, particularly the fact that the Accused Person is a first offender and who has exhibited sincere penitence in the circumstances. Rather than insist on his inalienable right to a trial, he pleaded guilty thereby saving tax payers resources and time of court.

I have similarly noted the notorious fact that the prison system in our country is faced with enormous challenges not only in terms of capacity but also its reformatory capabilities.

Having weighed all these including the disposition of the prosecution, I incline to the view that a lighter sentence appear to me desirable and appropriate in this case and would fully achieve the noble goals of deterrence and reforming the accused towards a pristine path of moral rectitude.

Accordingly, on **count one**, I hereby sentence the convict to a term of one (1) month imprisonment but with an option of fine in the sum of N20,000 (Twenty Thousand Naira Only).

On **count two**, I hereby sentence the convict to a term of one (1) month imprisonment, but with an option of fine also in the sum of N20, 000 (Twenty Thousand Naira Only).

On **count three**, the convict is hereby sentenced to a term of one (1) month imprisonment but with an option of fine in the sum of ~~N~~20,000 (Twenty Thousand Naira).

The prison terms are to run concurrently while the fines are to run consecutively.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. I.G. Odibo (Mrs) for the Complainant**
- 2. Femi Motojesi Rsq., for the Defendant.**